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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 252

JOSIAH T. ROSE, Collector of Internal Revenue for the District of Georgia,

Petitioner,

vs.

THE STANDARD NUT MARGARINE COMPANY OF FLORIDA,

Respondent.

BRIEF FOR RESPONDENT

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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1931.

No. 252

JOSIAH T. ROSE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA,

Petitioner,

vs.

THE STANDARD NUT MARGARINE COMPANY OF FLORIDA,

Respondent.

MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Respondent.

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the District Court for the Northern District of Georgia denying respondent's bill for injunction is found in the record pages 22 to 24. The opinion of the Circuit Court of Appeals, reversing the decision of the District Court, is reported in 49 Fed. (2) 85.

QUESTION PRESENTED

The question, as respondent views it, is:

Is a District Court regardless of circumstances (extraordinary and exceptional or otherwise) prohibited by Sec. 3224 R. S. from restraining revenue officials from attempting the collection of a levy in the guise of a license tax upon wholesale and retail dealers in respondent's Southern Nut Product in the State of Georgia, which product has in several instances been held by courts not to be oleomargarine and not taxable as such and when similar officials in the State of Florida have been

enjoined by the District Court there from attempting to collect a levy under the guise of a manufacturers tax upon the same product under the same law; the court (Georgia) finding that respondent had a property right in Georgia, the destruction of which a court of equity might protect, and also that respondent had no adequate remedy at law, and that the damage would be incapable of computation, (R. 38) respondent not being the alleged taxpayer and would be unable to comply with R. S. 3226 by paying the levy and suing to recover it back, even if it had been a tax?

Respondent presents that the only question for consideration by the court is as to whether the circumstances as described constitute such exceptional and extraordinary circumstances under prior decisions of this court as to constitute an exception to R. S. 3224. Hill v. Wallace, 259 U. S. 44, 66 L. Ed. 822. Bailey v. George, 259 U. S. 16, 66 L. Ed. 816; Dodge v. Brady, 240 U. S. 122, 60 L. Ed. 560.

We direct this court's attention to the brief filed in the case of Peter H. Miller, Collector v. The Standard Nut Margarine Co. of Florida, Respondent, No. 251, filed herewith, and point out that in addition to all the reasons there given and believed to constitute extraordinary and exceptional circumstances, the additional reason that in this case respondent is not the alleged taxpayer and that petitioner was proceeding in defiance of a decision of the District Court of the Southern District of Florida which had enjoined similar officials there and which decision was at the time being appealed by the Government.

STATUTES INVOLVED

There is involved in this appeal a construction of Sec. 3224 Revised Statutes, 26 U. S. C. A. 154.

STATEMENT

Respondent submits the following as its conception of an accurate statement of the case (R. 1-17):

It is a Florida corporation and manufactured at its factory in Jacksonville, Florida, a product known as Southern Nut Product, which consisted of coconut oil, peanut oil, salt, water and coloring matter (R. 1). Petitioner sought to force respondent's dealers in the State of Georgia to pay an annual special license tax of $480 by wholesalers, and $48 by retailers of the product as a special tax on the sale or artificially colored oleomargarine.

An identical product, known as Nut-Z-All, manufactured and sold by the Higgins Mfg. Co. of Providence, R. I., had been held not to be oleomargarine by Judge Brown of the District Court of Rhode Island, decided April, 1924 (Higgins v. Page, 297 Fed. 644, R. 2). The Government did not appeal the case, but disseminated the court's decision in the form of a treasury decision, T. D. 3590 (R. 2). The Commissioner of Internal Revenue informed oleomargarine manufacturers that such products were not taxable as oleomargarine (R. 3).

Other identical products came on the market and the attempt of the revenue department to tax them as oleomargarine by T. D. 4006 (R. 3) was enjoined by Justices Bailey and Hoehling of the Supreme Court of the District of Columbia (Opinion unpublished, R. 5) and an attempt to tax the Higgins product was enjoined by Judge Lowell in the District Court of Rhode Island, July, 1927 (Higgins v. Page, 20 Fed. (2d) 948) (R. 4) and later by Justice Adkins in the Supreme Court of the district of Columbia. (Petitioners Brief in Miller v. Standard Nut Margarine Co. No. 251, p. 45-47).

Respondent then sought permission of the Commissioner of Internal Revenue to manufacture an identical product under the trade name of Southern Nut Product, and was informed by the Commissioner of Internal Revenue by letter that it had the same right to manufacture such a product tax-free as those

manufacturers who had received favorable court decisions (R. 6). Respondent proceeded to manufacture and sell Southern Nut Product. Judge Barrett of the District Court of the Southern District of Georgia held in a state case (Baltimore Butterine Co. v. Talmadge, 32 Fed. (2), 904, May 1929) that Southern Nut Product was not an imitation of butter (R. 7), and was not oleomargarine, as defined by Federal Law.

The Collector of Internal Revenue at Jacksonville, Florida, attempted to tax Southern Nut Product as oleomargarine, and in March, 1930, was enjoined from so doing by Judge Jones of the District Court of Florida (R. 8, 9). The Commissioner of Internal Revenue did not believe such products taxable as oleomargarine and so informed Congress. Congress did not believe such products taxable and amended the definition of oleomargarine to include such products, such amendment to become effective July 10, 1931. (Miller v. Standard Nut Margarine Co. of Florida, 49 Fed. (2d) 79).

Notwithstanding all these facts, petitioner, Collector of Internal Revenue for Georgia, attempted to compel respondent's dealers in Georgia to pay license taxes as dealers in artificially colored oleomargarine (R. 8). Rather than pay such an unreasonable and exorbitant demand, such dealers refused to handle Southern Nut Product, and respondent's valuable business in that state was threatened with destruction. The bill for injunction herein was filed in the District Court for the Northern District of Georgia, (R. 1-11), but the injunction was refused by the District Court relying upon R. S. 3224 (R. 22-24). A motion of defendant to dismiss was granted (R. 25) and respondent appealed therefrom to the Circuit Court of Appeals for the Fifth Circuit. The court did grant an injunction pending appeal. The court expressed no opinion as to whether the product was oleomargarine but relied entirely upon the assertion of petitioner that it was a tax and upon the prohibition of the statute relating to "taxes." The decision of the District Court refusing injunctive relief

was reversed by the Circuit Court of Appeals of the 5th Circuit (49 Fed. (2d) 85). It is this decision that petitioner seeks to have reviewed.

ARGUMENT

The court below (R. 23) found that respondent's business with its dealers in the State of Georgia is a property right, the destruction of which a court of equity might properly protect.

> HEWIN v. ATLANTA, 121 Ga. 723, 736
> TRUAX v. RAICH, 239 U. S. 33.

That court (R. 23) also found that respondent had no adequate remedy at law under Sec. 156, 26 U. S. C. A. since not being the taxpayer, the statutes for payment and suit to recover were not available, and that the damage done would have been incapable of computation.

The District Court based its refusal to grant the injunctive relief sought solely because of the prohibition of Sec. 3224 R. S. and held that because of that statute it was without power to grant the relief to which it was admitted respondent was entitled. The District Court refused to consider the rule laid down by this court that the statute does not prevent an injunction in a case apparently within its terms in which some extraordinary and exceptional circumstances make its provisions inapplicable (Hill v. Wallace, 259 U. S. 44), and that the inhibition is absolute, notwithstanding the Revenue officials were proceeding to levy a tax in absolute defiance to decisions of the courts, that the product was not taxable.

If such is the law the rulings of the Bureau of Internal Revenue officials supersede court decrees, or as said by Judge Lowell, in Higgins v. Page, 20 F. (2) 948:

> "If it be true, as contended by the defendant that a tax may be collected, although it has been judicially de-

termined to be illegal, the result will be that the taxing authorities are entirely above and beyond the law,"

or, as said by Mr. Justice Bailey, (R. 5):

"There would be no end to litigation if the defendant should persist in levying a tax after the courts have held the tax invalid."

Justice Bailey might have well said there would be no purpose in litigation if the Revenue officials may persist in levying a tax even though the courts have held such tax illegal, and the citizen is entirely at the mercy of an executive department.

When this case reached the District Court, the following situation existed:

Judge Jones had in a case where this product and the product of the Higgins Mfg. Co. were both before him been satisfied, from personal inspection and testimony, that they were identical and since the Revenue Department was not attempting to tax the Higgins product, respondent was entitled to the same privilege.

Judge Barrett (32 Fed. (2) 902) had in a case before him held that Southern Nut Product was not an imitation of anything and was not oleomargarine.

Judge Brown (297 Fed. 644) had held that the Higgins product (identical to Southern Nut Product) was not made in imitation or semblance of butter and hence was not oleomargarine.

It is conclusive from the above judicial holdings based upon the facts, to say nothing of the instances where courts had theretofore restrained the Commissioner from attempting to tax these products, that the courts had decided the product was not oleomargarine under the law, and not being oleomargarine, no tax could be collected upon it.

Whether the demand was a penalty, a fine, or what not, it is certain it was not a tax, and the prayer was not to restrain the petitioner from collecting a tax but to restrain him from making any effort to apply the oleomargarine law with respect to Southern Nut Product as oleomargarine.

The District Court failed to appreciate that the courts had definitely decided that the product was not taxable and that he was not being asked to restrain the collection of any tax, and that therefore Sec. 3224 R. S. did not apply.

COMMENT UPON PETITIONER'S BRIEF

Petitioner appears to have missed the point in this case and to have proceeded upon the theory that respondent is the "taxpayer", and that "this action was brought to restrain the collection of any further tax on Southern Nut Product".

This is not the situation. Neither respondent or its dealers were taxpayers and there was no prayer to restrain the collection of any tax against it or its product, Southern Nut Product. Respondent sought to restrain the revenue officials from destroying its business in Southern Nut Product in Georgia, such destruction being accomplished by the said officials endeavoring to force respondent's dealers in Georgia to pay a license tax for the privilege of dealing in Southern Nut Product as upon dealers in artificially colored oleomargarine. The question as to whether Southern Nut Product was oleomargarine was not before the District Court and was not decided by the District Court.

The injunction sought was really to restrain the violation by petitioner of a valid existing injunction granted to respondent by the District Court of Florida.

CONCLUSION

We present that the Circuit Court of Appeals did not err in holding that extraordinary and exceptional circumstances existed which constituted an exception to R. S. 3224 and that the judgment of the Circuit Court of Appeals should be affirmed.

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SUPREME COURT OF THE UNITED STATES.

Nos. 251 and 252.—October Term, 1931.

Peter H. Miller, Individually and as Collector of Internal Revenue for the District of Florida, Petitioner, 251 *vs.* The Standard Nut Margarine Company of Florida.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.
Josiah T. Rose, Collector of Internal Revenue for the District of Georgia, Petitioner, 252 *vs.* The Standard Nut Margarine Company of Florida.	

[February 15, 1932.]

Mr. Justice Butler delivered the opinion of the Court.

No. 251.

Respondent, a manufacturer of "Southern Nut Product", brought this suit in the Southern District of Florida to restrain petitioner from collecting from respondent or from dealers selling its product, any tax purporting to be levied under the Oleomargarine Act of August 2, 1886, 24 Stat. 209, as amended by the Act of May 9, 1902, 32 Stat. 194. Petitioner answered denying the essential allegations of the complaint. Respondent applied for a temporary injunction, the court found that it would suffer irreparable injury unless petitioner be restrained pending the final disposition of the case and granted the application. At the trial respondent introduced oral and documentary evidence together with specimens of the product sought to be taxed. The court found that the material allegations of the complaint were established by the evidence and granted permanent injunction. The record states in condensed form the substance of the testimony but

does not contain the documents which were made exhibits and introduced in evidence. The Circuit Court of Appeals found, and it appears from the testimony brought up, that omitted exhibits constitute a material part of the evidence received and that the record is consistent with the trial court's conclusion in respect of the facts; it held R. S., § 3224, does not apply and affirmed the decree. 49 F. (2d) 79, 82, 85.

That section declares (26 U. S. C., § 154): "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court". This suit was commenced December 26, 1929. The complaint, the evidence contained in the record and documents of which judicial notice may be taken show the following facts:

In April, 1928, respondent commenced and thereafter carried on at Jacksonville, Florida, the manufacture and sale of Southern Nut Product. It contained no animal fat but was made exclusively of cocoanut oil, peanut oil, salt, water and harmless coloring matter; it was sold in one pound cartons for cooking, baking and seasoning. Respondent built up a valuable business in the sale of the product to dealers in Florida and other States.

In January, 1922, the Commissioner of Internal Revenue issued to the Higgins Manufacturing Company a permit to manufacture and sell "Nut-Z-All" without paying the oleomargine tax thereon. He revoked the permit in December of the same year and purported to assess such a tax upon some of that product. The company, having paid it under protest to the collector in Rhode Island, brought an action against him in the United States district court for that State to recover the amount so exacted. After hearing evidence, including the testimony of chemists in the Bureau of Internal Revenue called in behalf of the collector, the court in April, 1924, found that the product was not made in imitation or semblance of butter, was not intended to be sold as or for butter and was not oleomargarine or taxable as such. 297 Fed. 644. Thereupon the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury promulgated the court's decision as Treasury Decision 3590, thus informing all concerned that the product was not subject to the tax.

In August, 1924, the deputy commissioner, in answer to an inquiry made by the Institute of Margarine Manufacturers as to the

taxability of "Nut-Z-All", sent a letter stating: "The court, having held the product to be not taxable as oleomargarine, the fact that retailers advertise and sell it as butter, or as a substitute for butter, would not render them or the manufacturers liable under the internal revenue law".

April 1, 1927, the Commissioner, contrary to the court's decree, Treasury Decision 3590 and his deputy's response to the Institute's inquiry, promulgated Treasury Decision 4006 which declared products similar to "Nut-Z-All" taxable as oleomargarine if colored to look like butter. Then the Higgins Manufacturing Company brought suit in the federal court for Rhode Island to restrain the collector from enforcing the tax on its product. The court, upon the allegations of the complaint admitted by motion to dismiss, found that the facts there alleged in respect of taxability were identical with those shown in the earlier case; that the collector was threatening to enforce the tax which had been adjudged illegal; that if the tax should be collected plaintiff's business would be ruined and, July 18, 1927, granted temporary injunction, 20 F. (2d), 948, which was made permanent in December following.

In July, 1927, the Baltimore Butterine Company brought suit in the supreme court of the District of Columbia to enjoin the Commissioner and his deputy from enforcing the tax as declared in Treasury Decision 4006 against its product "Nu-ine" which was identical in content and appearance with "Nut-Z-All" made by the Higgins Manufacturing Company and Southern Nut Product made by respondent in this case. The court held the product not taxable and granted a permanent injunction.

No appeal was taken in any of the cases above mentioned. And the petitioner, by letter, answering an inquiry made by respondent, advised respondent that its product would not be taxable as oleomargarine.

Relying on the decision in *Higgins Mfg. Co.* v. *Page*, 297 Fed. 644, Treasury Decision 3590, the deputy commissioner's letter to the Institute and the injunctions above referred to, respondent believed the product which it proposed to manufacture and sell would not be taxable as oleomargarine and, upon receipt of petitioner's letter, commenced manufacture and sale of the product.

In 1928, pursuant to instructions sent him by the deputy com-

missioner stating that respondent's product was held taxable as colored oleomargarine, the petitioner demanded and threatened to collect a tax of ten cents a pound upon respondent's product. But petitioner made no effort to collect the tax on "Nut-Z-All" which at the time of the trial was being sold in Florida. Excluding the tax from cost, respondent's net profit was approximately three cents per pound. The enforcement of the Oleomargarine Act against respondent would impose a tax that respondent would be unable to pay, would subject it to heavy penalties and the forfeiture of its plant together with the materials and manufactured product on hand, and would destroy its business.

The complaint asserts that the exaction of ten cents per pound, while in the guise of a tax, is really a penalty imposed to eliminate competition with butter and is therefore in excess of the power granted to the Congress by the Constitution. But, having regard to *McCray* v. *United States*, 195 U. S. 27, 59, we treat the imposition laid by the Act upon oleomargarine as a valid excise tax. The rule that § 3224 does not extend to suits brought to restrain collection of penalties (*Lipke* v. *Lederer*, 259 U. S. 557, 562. *Regal Drug Co.* v. *Wardell*, 260 U. S. 386) does not apply.

Petitioner does not here assign as error the finding below that respondent's product was not oleomargarine. He seeks reversal upon the grounds that the statute forbids injunction against the collection of the tax even if erroneously assessed; that this assessment was made by the Commissioner under color of his office, was not arbitrary or capricious and that, if there is any exception to the application of § 3224, this case is not within it.

We are of opinion that, as held below and here claimed by respondent, the product in question was not taxable as oleomargarine defined by § 2 of the Act of 1886. It is as follows:

"That for the purposes of this act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as 'oleomargarine', namely: All substances heretofore known as oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, vegetable-oil annotto, and other coloring matter, intestinal fat, and offal fat

made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter."

That definition remained in force until July 10, 1931. It was amended by the Act of July 10, 1930, 46 Stat. 1022, effective twelve months later, the material parts of which are printed in the margin.* The hyphen in the phrase "vegetable-oil" was eliminated and a comma was inserted between those words and "annotto". Words added are shown in italics and words deleted are within brackets.

When the Act of 1886 was passed various imitations of and substitutes for butter, the principal ingredients of which were the fats of cattle and swine, were being manufactured and sold in large quantities. Products such as respondent's which contain no animal fat were unknown and were not made in substantial quantities until much later. There is nothing in the Act, or that has been brought to our attention, to suggest that Congress anticipated the development of the art later to occur. Annotto had long been used to color butter and cheese and was then being used to make oleomargarine resemble butter. It is a coloring material found in association with the oil content of the covering of certain tree seeds. When prepared for sale and use the colorant is contained in a stiff oily mass that was then well-known in the market. The words "vegetable-oil annotto" appropriately describe that substance. The hyphen between "vegetable" and "oil" and the absence of any punctuation mark following them signify that the words so compounded qualify "annotto" and indicate that such coloring material was meant. And that construction is strongly

*"Sec. 2. That for the purposes of this Act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as 'oleomargarine', namely: All substances heretofore known as oleomargine, oleo, oleomargine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, *fish oil or fish fat*, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat;—*if* (1) made in imitation or semblance of butter, or [when so made] (2) calculated or intended to be sold as butter or for butter, *or* (*3*) *churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of 1 per centum or common salt.* . . ."

supported by the use in the same connection of the words "and other coloring matter."

Regulations promulgated under the Act omit the hyphen and add a comma thus making the phrase to read "vegetable oil, annotto". The Commissioner's determination that respondent's product is oleomargarine necessarily was based on that version. It is elementary that tax laws are to be interpreted liberally in favor of taxpayers and that words defining things to be taxed may not be extended beyond their clear import. Doubts must be resolved against the Government and in favor of taxpayers. *United States* v. *Merriam*, 263 U. S. 179, 188. *Bowers* v. *N. Y. & Albany Co.*, 273 U. S. 346, 350. The legislative history and passage of the amendatory Act of 1930 show that the Commissioner as well as the Congress found that an enlargement of the definition was necessary in order to cover products such as respondent's. The language used in the original Act was not sufficiently clear and definite to include products containing no animal fat. The Commissioner's rendition of the governing phrase was without warrant. His determination that respondent's product was oleomargarine and taxable under the Act was erroneous and, in view of his earlier interpretations and the court decisions which had become final, must be held arbitrary and capricious. It was without force. *Interstate Commerce Commission* v. *Louis. & Nash. R. R. Co.*, 227 U. S. 88, 91. *Kwock Jan Fat* v. *White*, 253 U. S. 454, 457, 464. *United States* v. *Mann*, 2 Brock. 9, 11.

Independently of, and in cases arising prior to, the enactment of the provision (Act of March 2, 1867, 14 Stat. 475) which became R. S., § 3224, this court in harmony with the rule generally followed in courts of equity held that a suit will not lie to restrain the collection of a tax upon the sole ground of its illegality. The principal reason is that, as courts are without authority to apportion or equalize taxes or to make assessments, such suits would enable those liable for taxes in some amount to delay payment or possibly to escape their lawful burden and so to interfere with and thwart the collection of revenues for the support of the government. And this court likewise recognizes the rule that, in cases where complainant shows that in addition to the illegality of an exaction in the guise of a tax there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity

jurisprudence, a suit may be maintained to enjoin the collector. *Dows* v. *City of Chicago*, 11 Wall. 108. *Hannewinkle* v. *Georgetown*, 15 Wall. 547. *State Railroad Tax Cases*, 92 U. S. 575, 614. Section 3224 is declaratory of the principle first mentioned and is to be construed as near as may be in harmony with it and the reasons upon which it rests. *Cumberland Telephone & Telegraph Co.* v. *Kelly*, 160 Fed. 316, 321. *Baker* v. *Baker*, 13 Cal. 87, 95. *Bradley* v. *The People*, 8 Colo. 599, 604. 2 Sutherland, 2nd Lewis ed., § 454. The section does not refer specifically to the rule applicable to cases involving exceptional circumstances. The general words employed are not sufficient, and it would require specific language undoubtedly disclosing that purpose, to warrant the inference that Congress intended to abrogate that salutary and well established rule. This court has given effect to § 3224 in a number of cases. *Snyder* v. *Marks*, 109 U. S. 189, 191. *Dodge* v. *Osborn*, 240 U. S. 118, 121. *Dodge* v. *Brady*, 240 U. S. 122. It has never held the rule to be absolute, but has repeatedly indicated that extraordinary and exceptional circumstances render its provisions inapplicable. *Hill* v. *Wallace*, 259 U. S. 44, 62. *Dodge* v. *Osborn, supra*, 12. *Dodge* v. *Brady, supra*. Cf. *Graham* v. *du Pont*, 262 U. S. 234, 257. *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1.

This is not a case in which the injunction is sought upon the mere ground of illegality because of error in the amount of the tax. The article is not covered by the Act. A valid oleomargarine tax could by no legal possibility have been assessed against respondent and therefore the reasons underlying § 3224 apply, if at all, with little force. *LeRoy* v. *East Saginaw Ry. Co.*, 18 Mich. 233, 238-239. *Kissinger* v. *Bean*, Fed. Cas. 7853. Respondent commenced business after the product it proposed to make had repeatedly been determined by the Commissioner and adjudged in courts not to be oleomargarine or taxable under the Act and upon the assurance from the Bureau that its product would not be taxed. For more than a year and a half respondent sold its product relying that it was not subject to tax. If required to pay the tax its loss would be seven cents per pound. Before the Commissioner's latest ruling respondent had made and sold so much that the tax would have amounted to more than it could pay. Petitioner acquiesced in the injunctions granted in Rhode Island and the District of Columbia and did not assess any tax upon identical

products contemporaneously being made by complainants in such suits and directed enforcement against respondent's entire product. Such discrimination conflicts with the principle underlying the constitutional provision directing that excises laid by Congress shall be uniform throughout the United States. It requires no elaboration of the facts found to show that the enforcement of the Act against respondent would be arbitrary and oppressive, would destroy its business, ruin it financially and inflict loss for which it would have no remedy at law. It is clear that, by reason of the special and extraordinary facts and circumstances, § 3224 does not apply. The lower courts rightly held respondent entitled to the injunction.

No. 252.

This case was decided in the Circuit Court of Appeals at the same time as No. 251 (49 F. (2d), 85) presents the same question and is governed by the foregoing opinion.

Decrees affirmed.

Mr. Justice STONE.

In my opinion, R. S. § 3224, which says that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," cannot rightly be construed as permitting the present suit, whose sole purpose is to enjoin the collection of a tax. Enacted in 1867, this statute, for more than sixty years, has been consistently applied as precluding relief, whatever the equities alleged.

Mr. Justice BRANDEIS joins me in this opinion.